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MAY 18 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OSCAR MAURICIO MARTINEZ
CORVERA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74219

Agency No. A94-196-846

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 15, 2006**

Before: B. FLETCHER, TROTT and CALLAHAN, Circuit Judges.

Oscar Mauricio Martinez Corvera, a native and citizen of El Salvador,
petitions for review of the Board of Immigration Appeals' order affirming without

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

opinion an immigration judge's ("IJ") decision denying his motion to reconsider the IJ's decision denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider, *Oh v. Gonzales*, 406 F.3d 611, 612 (9th Cir. 2005), and for substantial evidence the underlying factual findings, *Celis-Castellano v. Ashcroft*, 298 F.3d 888, 891 (9th Cir. 2002). We deny the petition for review.

The IJ did not abuse his discretion in concluding that Martinez Corvera failed to establish any error of law or fact in the IJ's previous decision denying Martinez Corvera's motion to reopen. Substantial evidence supports the IJ's determinations that Martinez Corvera's evidence was insufficient to meet his burden of establishing exceptional circumstances, *see id.* at 891-92, and that Martinez Corvera failed to contact the immigration court the day of the hearing to explain his absence, *see id.* at 892. The IJ properly disregarded the newly-submitted declaration of Sandra Franco because it could have been submitted previously with the motion to reopen. *See Socop-Gonzales v. INS*, 272 F.3d 1176, 1180 n.2 (9th Cir. 2001) (en banc); 8 C.F.R. § 1003.23(b)(3).

Martinez Corvera's remaining contentions lack merit.

PETITION FOR REVIEW DENIED.